ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the	)	PR Docket No. 93-61
Commission's Rules to Adopt	)	RM 8013
Regulations for Automatic Vehicle	)	
Monitoring Systems	)	

TO: The Commission

OPPOSITION TO APPLICATION FOR FREEZE

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SUMMARY

AMTECH Corporation ("AMTECH") opposes the application for a freeze ("Freeze Request") on automatic vehicle monitoring ("AVM") licensing in the 904-912 and 918-926 MHz band filed by North American Teletrac and Location Technologies, Inc. ("PacTel"). The Freeze Request is based on PacTel's misinterpretation of the current interim AVM rules that the Commission explicitly rejected in its recent Notice of Proposed Rulemaking ("NPRM") in PR Docket No. 93-61, where the FCC is considering the adoption of permanent AVM rules. Rather than providing for exclusive authorizations in the 904-912 and 918-926 MHz sub-bands, as PacTel contends, licensing in this spectrum is and always has been on a shared basis among narrowband and wideband systems. So heavily does PacTel reply upon its erroneous construction of the current rules, the Commission's statements regarding those regulations in the *NPRM* singlehandedly dispose of most of PacTel's arguments.

Nor is a freeze necessary to preserve the Commission's flexibility in the rulemaking. The Commission has put all AVM licensees on notice, including PacTel, "that final rules may require any licensee, regardless of the type of system or frequencies that the system operates on, to modify its operations."

Moreover, a freeze is not necessary to promote development of AVM technologies and systems. The record created in response to PacTel's May 1992 Petition for Rulemaking made clear that serious research and development in AVM technologies has continued under the shared spectrum regime. In addition, recent

narrowband and wideband applications, which PacTel has opposed, provide evidence that AVM operators desire to implement new systems under the current regulatory structure. Apparently, the only need for a freeze (and exclusivity) is to give PacTel some assurance that it will be able to operate its fragile systems.

The Freeze Request is just the latest step in a campaign by PacTel to obtain retroactive exclusivity in the 904-912 MHz sub-band on an all but nationwide basis. To do so, PacTel has warehoused licenses -- constructing in only six markets to date

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TO: The Commission

OPPOSITION TO APPLICATION FOR FREEZE

AMTECH Corporation ("AMTECH"), by its attorneys, hereby submits its opposition to the Application for Freeze ("Freeze Request") filed by North American Teletrac and Location Technologies, Inc. ("PacTel") in the above-captioned

freeze. At bottom, PacTel's Freeze Request is yet the latest attempt by PacTel to manipulate the agency's processes to its sole benefit and to stifle the implementation of other AVM systems whose operations are fully consonant with the interim rules as the Commission, within its discretion, has interpreted them. Accordingly, PacTel's Freeze Request should be denied expeditiously.

I. PACTEL'S FREEZE REQUEST FLIES IN THE FACE OF THE FCC'S INTERPRETATION AND APPLICATION OF THE RULES

The Freeze Request is predicated primarily upon PacTel's erroneous construction of the interim AVM rules, of which PacTel purportedly seeks to prevent further "misapplication."[2] Generally, PacTel contends that, under the interim rules adopted in 1974, wideband pulse-ranging AVM systems are to be licensed on an exclusive basis in the 904-912 and 918-926 MHz band.[3] This is not the first time PacTel has put forward this self-serving and mistaken construction of the interim rules.

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[2] Even PacTel's contention that, absent a freeze, investment in AVM technology will cease relies upon its incorrect understanding of the interim rules. As the record developed in response to PacTel's Petition for Rulemaking (RM 8013) made clear, there has been and is considerable interest and investment in existing and new AVM technologies for operation under the current regulatory structure. *See discussion in* Reply Comments of AMTECH, RM No. 8013 (filed August 7, 1992) at 10-12 and comments cited therein. PacTel's apparent reluctance to invest further in its own technology, (*see* Affidavit of Cynthia S. Czerner ¶ 7, May 19, 1993, ("Czerner Affidavit") attached to PacTel's Freeze Request as Exhibit A) reflects not current market conditions but PacTel's belated concerns about buying

The FCC's history of licensing AVM systems in these bands makes clear the agency does not share PacTel's view.[4] Indeed, the Commission recently rejected it explicitly. The *NPRM* explained unequivocally that PacTel's interpretation was wrong and had apparently laid this issue to rest. Recognizing that numerous licenses have "been granted on a non-exclusive basis in the 904-912 MHz and 918-926 Mhz bands for both wide and narrowband type systems,"[5] the Commission went on directly to refute PacTel:

> [PacTel] contends that the Commission always intended that AVM systems would be licensed on an exclusive basis, implying that the Licensing Division has erred in licensing systems on a non-exclusive basis. . . . *We do not find sufficient evidence in any of the Commission's past proceedings or in the interim rules to support this claim.* The interim rules were adopted at a time when very little information was available on AVM systems, including the demand for such services, or on the eventual technology that would be used to provide these services. The interim rules were, therefore, intended to promote the technological and marketplace development of AVM systems in general and to provide an environment of experimentation. To this end *we believe that our licensing methods have reflected this intent.* Additionally, at the time the interim rules were adopted there were no licenses being granted on an exclusive basis in the private land mobile services. Exclusive licenses were not adopted until May, 1974, in PR Docket 18262, 46 FCC 2d 752 (1974) and *there is no evidence in the Report and Order that the*

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[4] AMTECH, it its Opposition to PacTel's Petition for Rulemaking, RM-8013, explained in considerable detail why the licensing of narrowband and wideband systems in the 904-912 and 918-926 MHz bands was totally consistent with the interim rules and the FCC's public interest findings when it adopted the rules. *See* Opposition to Petition for Rulemaking of AMTECH Corporation, RM-8013 (filed July 23, 1992) at 15-24.

[5] *NPRM* at 2504.

Commission was contemplating applying such a new concept to the AVM service.[6]

In short, the arguments raised in the Freeze Request, which depend upon PacTel's rejected construction of the interim rules, must likewise be rejected. Given the Commission's unequivocal explanation in the *NPRM*, the Freeze Request is more of a Petition for Reconsideration of the *NPRM* -- a pleading which would be procedurally improper -- or even of the 1974 Report and Order adopting the current rules -- a pleading which would be almost twenty years too late.

PacTel, indirectly acknowledging that its construction of the current AVM regulatory structure is at odds with that of the agency's in the *NPRM*, fashions an argument that the FCC is not following its own rules.[7] PacTel misses the point entirely. Indeed, it is PacTel that would have the Commission diverge from its own rules. While PacTel chides the FCC for breaking its own regulations, it is notable that all of PacTel's licenses provide for narrowband forward-link operations within the 918-926 MHz band, which PacTel would preserve for exclusive wideband licensing. Not only are the links admittedly "narrowband" paging transmitters,[8] the prime rationale

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[6] *Id.* at 2504 n.29 (emphases added). The FCC's concise articulation of its intent in adopting and applying the interim should singlehandedly dispose of most of the arguments in the Freeze Request.

[7] *Freeze Request* at 5-6.

[8] Affidavit of Dr. Charles L. Jackson at 11, April 6, 1993, attached to PacTel's Freeze Request as Exhibit B ("It should be noted that the high-powered Teletrac transmission are narrowband transmission using traditional FM technology.")

for placing them in the other 8 MHz wide sub-band appears to be discourage other wideband systems from making efficient use of that sub-band.

The Commission *always* interpreted its AVM rules in the way it does now.[9] Conversely, the Commission could not have interpreted its AVM rules to provide for exclusive licensing, because the private land mobile radio rules in effect in 1974 permitted such licensing only when explicitly provided for, as they do now.[10] Section 90.239 of the Rules, governing AVM licensing, and its predecessors have never so provided. Therefore, because the Freeze Request depends wholly on an erroneous construction of the agency's rules, the Freeze Request should be denied. PacTel's attempt to preempt the Commission's rulemaking process should not be countenanced.

freeze on licensing in certain limited circumstances, it has done so only when it has determined that its regulatory flexibility might otherwise be jeopardized.[11] PacTel proffers three reasons for a freeze, none of which has sufficient merit to justify the drastic relief it seeks.

First, PacTel suggests that "absent a freeze, continued licensing of narrowband systems in the wideband allocation will increase the potential for interference and actual interference."[12] As an initial matter, as explained above, there is no exclusive wideband allocation in the AVM band. As the *NPRM* stated, licensing of AVM systems on a shared basis in the 904-912 and 918-926 MHz sub-bands reflects the intent of the interim rules.[13] In a shared spectrum environment, it is only natural that additional licensing will, at least theoretically, increase the possibility of interference.

First, the Commission has available the authority to modify the licenses of any systems authorized under the current rules and require them to migrate to another part of the AVM band or otherwise modify their operations.[14] Indeed, the NPRM proposes as much[15] and has put all AVM licenses on notice -- including PacTel -- "that final rules may require any licensee, *regardless of the type of system or frequencies that the system operates on*, to modify its operations."[16]

PacTel has systems operating in only six markets.[17] No other wideband systems appear to be operational anywhere else, as it notes.[18] This situation is essentially unchanged from almost a year ago, when the record in RM 8013 was developed. Accordingly, there seems little chance that the handful of narrowband applications that may be processed pending the adoption of final rules[19] will pose a major addition to the threat perceived by PacTel.[20] Indeed, PacTel originally proposed

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[14] 47 U.S.C. §§ 154(i) and 303(c) and (r). *See also* 47 C.F.R. § 90.173(b) (FCC may impose restrictions on operations and the use of frequencies on any licensee in shared spectrum). Whether such forced migration is in the public interest is a matter to be addressed first in the rulemaking.

[15] *NPRM* at 2505.

[16] *Id.* 2507 n. 56.

[17] Czerner Affidavit, ¶ 2.

[18] *Id.*

[19] PacTel was able to count only twenty-three applications in the year following its May 1992 Petition for Rulemaking. *Freeze Request* at 12 n.21. This relatively small number is actually a testament to the possible chilling effect of the anti-competitive PacTel petition, in just a few years prior to May 1992, approximately thirteen hundred transmitter sites have been authorized for AMTECH-equipped systems alone. The licensing thermostat need not be turned lower.

[20] *See, infra*, pp. 10-13.

that narrowband licensees in the 904-912 and 918-926 MHz sub-bands be grandfathered indefinitely.[21]

Second, PacTel questions the advisability of licensing multiple wideband systems in the same sub-bands in the same area, contending that the interim rules do not support such licensing and that it is not technologically feasible.[22] As with narrowband licensing in the sub-bands at issue, the Commission has stated that this practice is consistent with its interpretation of its rules.[23] For its part, AMTECH does not oppose such multiple licensing of wideband systems in spectrum that it, too, occupies. Moreover, AMTECH notes that several proponents of wideband systems commented in RM-8013 that such sharing was possible and practicable.[24] In light of this evidence and the fact that PacTel has obtained licenses in myriad markets, including all of the top 50,[25] PacTel's request, as amplified below, should be seen for what it is: an attempt to lock out its would be competitors and to stifle further

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[21] PacTel Petition for Rulemaking, RM No. 8013 (filed May 28, 1992) at 35. *See also* Comments of MobileVision in support of the Teletrac Petition for Rulemaking (filed July 23, 1992) at 17 (wideband licensee supporting PacTel grandfathering request).

[22] Freeze Request at 2-3, 6-10.

[23] *NPRM* at 2504 n.29.

[24] *See, e.g.*, Opposition of Pinpoint Communications; Inc., RM No. 8013 (filed July 23, 1992); Comments of Southwestern Bell Corporation, RM No. 8013 (filed July 23, 1992).

[25] *See* Reply Comments of Pinpoint Communications, Inc., RM No. 8013 (filed August 7, 1992), Attachment A.

technological wideband development. These objectives are in diametric opposition to the FCC's goals and should not be countenanced.[26]

Third, PacTel contends that if future license grants and STA are not frozen, future development of AVM systems will be chilled. Naturally, in its anxiety over its

system to its credit. In light of these facts, PacTel's feeble attempts to disparage others are ridiculous. Although the interim rules may undergo modification in certain respects, PacTel's claims do not rebut the evidence that the current licensing regime -- which PacTel would freeze -- is not a deterrent to AVM investment, particularly for robust systems designed to operate in the shared spectrum environment.

In short, PacTel makes no showing that a freeze is required to further the public interest. The Commission's licensing and rulemaking processes will not be jeopardized absent a freeze. Accordingly, the Freeze Request should be denied.

III. THE FREEZE REQUEST IS THE LATEST SEGMENT IN PACTEL'S STRATEGIC CAMPAIGN TO FRUSTRATE COMPETITION, WHICH THE COMMISSION SHOULD NO LONGER COUNTENANCE.

Stripped of its self-righteousness, PacTel's Freeze Request is cognizable as merely the latest attempt by this Regional Bell Operating Company affiliate to wear out the competition with nigh-frivolous or procedurally defective pleadings. For example, PacTel has filed objections[30] to license applications where the proposed system could not possibly interfere with PacTel's existing systems, or the vast number for which it is licensed, but which remain unbuilt.[31] Other objections have been filed without the

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[30] PacTel strikes an indignant posture that the Commission has been so audacious to grant licenses over its objections "without any notice despite the filing of the Petitions to Deny." Freeze Request at 12. PacTel knows, however, that the FCC's Rules do not provide for Petitions to Deny AVM applications. *See* 47 C.F.R. § 1.962. Thus, despite their self-styled caption, no "notice" or hearing prior to the license grants and the rejection of PacTel's objection was required. *Id.* § 1.971.

[31] *See, e.g.*, File No. 296370 (Application of Union Pacific Railroad for facilities at 911.5 and 918.5 MHz in Rock Springs, Wyoming.) Counsel for AMTECH has done a database search for licenses in the 904-912 MHz band within 60 miles of the proposed Union Pacific site and has found no PacTel

(continued...)

requisite verifications.[32] More recently, PacTel has filed untimely applications for review of license grants and stays of the authorizations' effectiveness.[33] Indeed, regarding at least one of the license grants for which PacTel has sought review, Pactel had a petition for reconsideration pending at the time it filed for review.[34] Here, PacTel seeks a freeze on an interpretation of the current rules that the *NPRM* explicitly rejects.

This flurry of procedurally defective and unsupported pleadings would appear to be part of PacTel's strategic design to harass all other AVM operators with the end of retroactively securing 8 MHz of exclusive spectrum. First, PacTel obtained AVM authorization under a regime of shared spectrum licensing for over one thousand sites in all of the top 50 markets as well as others. Second, PacTel secured an extremely extended implementation period of five years, without benchmarks, over four years of which have passed PacTel first received such approval.[35] Third, although these

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[31](...continued)
in the 904-912 MHz band within 60 miles of the proposed Union Pacific site and has found no PacTel authorizations or applications listed on any frequency. The closest operating PacTel system to the Union Pacific site is over six hundred miles away in Loss Angeles.

[32] *See, e.g.*, PacTel Petition to Deny Applications of Pinpoint Communications, Inc., File Nos. 347483-347502 (filed Mar. 17, 1993).

[33] PacTel Application for Review, File Nos. 342513, 343031, 344498, 345273, and 347230 (filed May 25, 1993). Under Section 1.4(b)(5) of the Commission's Rules, licenses such as those in the AVM service go on public notice when the licenses are issued. Application for review must be filed within 30 days of the public notice date. 47 C.F.R. § 1.104(b). PacTel seeks review of licensed granted more than thirty days prior to the filing of its applications; some were granted over ninety days prior to PacTel's filing. PacTel filed no motion for acceptance of its late filing.

[34] *See* PacTel Petition for Reconsideration, File No. 342513 (filed Mar. 17, 1993).

[35] Letter from Terry Fishel to Carole Harris (Mar. 23, 1989).

which have passed PacTel first received such approval.[35] Third, although these licenses were obtained for operation in shared spectrum, PacTel has held out the fragility of its system as a reason for drastic reinterpretation of the AVM licensing rules and as a pretext for what would amount to nationwide exclusivity for its AVM systems in the 904-912 MHz sub-band and in a portion of the 918-926 MHz band (for its narrowband forward links). Fourth, to the extent these actions have not had the desired chilling effect on other AVM licensees and applicants, PacTel has opposed all efforts by others to implement their systems, whether narrowband or wideband, whether or not there is any potential for any interference to PacTel operations, existing or possible. In other words, PacTel has obtained licenses in shared spectrum intending to use a technology that cannot operate in accordance with the FCC's rules, has warehoused licenses in an effort to preempt possible competition, and has employed scare tactics against its competitors and their customers.

Given this disruptive and strategic manipulation of the Commission's processes, if the FCC is to freeze anything, it should order PacTel to stop filing objections to other license applications in what is still and is likely to remain shared spectrum. Rather, PacTel should be reminded, consistent with the FCC's rules to which its licenses oblige it, to cooperate in the sharing of spectrum and to seek mutually satisfactory solutions.[36]

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[35] Letter from Terry Fishel to Carole Harris (Mar. 23, 1989).

[36] *See* 47 C.F.R. § 90.173(b).

resolving actual and potential interference situations pursuant to Section 90.173(b) of the Rules.[37] Indeed, it is noteworthy that, in all of the instances where PacTel has informed AMTECH of a perceived interference conflict, PacTel has never once made a concrete proposal to modify its operations as any part of a solution.[38] Rather, in order to reach a solution to accommodate PacTel's fragile technology, AMTECH has always moved to different frequencies if the situation could not otherwise be resolved by AMTECH.[39] In light of this record, a clear statement by the Commission regarding PacTel's behavior would be all the more appropriate.

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[37] *See* Affidavit of John L. Piechota, May 20, 1993, at 2-4 ("Piechota Affidavit") attached as Exhibit C to the Freeze Request. Moreover, the Freeze Request and Piechota Affidavit incorrectly

IV. CONCLUSION

For the forgoing reasons, AMTECH respectfully submits that PacTel's Freeze Request is totally unjustified and should be denied. At most, the Freeze Request should be considered as comments on the *NPRM*.

Respectfully submitted,

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June 4, 1993

ATTACHMENT A

AMTECH
Technology A Generation Ahead

October 30, 1992

VIA COURIER

Mr. James D. Wells
Engineer-in-Charge
Federal Communications Commission
9330 LBJ Freeway
Room 1170
Dallas, Texas 75243-3429

Re: PacTel Teletrac Allegations of Interference at Dallas - Fort Worth International Airport and the Dallas North Toll Road

Dear Mr. Wells:

[redacted]

In the meantime, Teletrac has been seeking licenses in the 904 - 912 MHz band for an automatic vehicle monitoring system. In 1992, following changes affecting the Modified Final Judgment governing the breakup of the Bell System, PacTel and other Bell Operating Companies were allowed to enter the information services business. PacTel then acquired control of its joint venture partner North American Teletrac.

PacTel acquired and now holds authorizations in more than the top 100 major markets. Under the usual FCC licensing rule, PacTel would have had eight months to construct its facilities, and by now most of its licenses would have expired. PacTel, however, obtained an extended implementation schedule that allows it up to five years to build its proposed systems. At the time this extended implementation waiver was granted, the current rules providing for shared use of the 904 - 912 and 918 - 926 MHz bands for AVM purposes were in effect and there were no proposals pending to change the rules.

After PacTel obtained the generous extended implementation schedule, it initiated "phase 2" of its plan to obtain exclusive use of a major portion of the 902 - 928 MHz spectrum and oust other spectrum users. On May 28, 1992, PacTel filed a petition for rulemaking asking the FCC to change the rules so as to grant exclusivity to any license holder such as PacTel who held a license (whether constructed or not).[1] The petition also requested an extension of both the license term and the construction period to ten (10) years. PacTel also asked the FCC to make provisions for its narrowband "forward links," which are not mentioned at all in Section 90.239 of the current rules.[2]

In its Petition for Rulemaking, PacTel mischaracterized tag reader technology such as that developed by Amtech as "narrowband," and then asserted that such technology should not be permitted in

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[1] Like PacTel, another Bell Operating Company, Ameritech, has obtained authorizations in most markets for its own AVM system developed in conjunction with Mets Mobilevision, Inc. The Ameritech system, however, is apparently not yet in commercial operation although Ameritech has said it expects to begin service to Chicago later this year. Ameritech is licensed in the 918 - 926 MHz band with forward links at 904.375 - 904.625 MHz.

[2] The "forward links" are essentially paging channels that are used to send information or requests to mobile units. PacTel is authorized to operate forward links at powers of 1,000 watts in the band 924.890 - 925.140 MHz (250 kHz bandwidth).

the 904 - 912 MHz and the 918 - 926 MHz bands.[3] PacTel went on to assert that "[t]there are approximately ten entities licensed for narrowband AVM systems."[4] What PacTel failed to disclose is that there are well over 1000 authorized transmitters using Amtech technology employed for tag reader systems and that such systems are being used to track hundreds of thousands of vehicles in many areas throughout the United States. For example, over 50,000 users of the Dallas North Tollway depend daily on this technology. We estimate that there will be approximately 700,000 tags in use in the United States using the Amtech system by year end. The details of the widespread use throughout the United States of Amtech tag reader systems are described in great detail in the Opposition to Rulemaking filed by Amtech.

After asserting that the Amtech technology should not be allowed to operate in these bands, PacTel then went on to state that existing users of such technology should be "grandfathered" and allowed to renew their licenses.[5] We note that this is in direct contradiction to PacTel's October 20 interference complaint wherein PacTel argues strenuously that Amtech type technology is improperly licensed in the 904 - 928 MHz band.

The Petition for Rulemaking and the numerous documents filed in opposition are pending at the FCC. PacTel has apparently not been content to allow the FCC regulatory rulemaking process to run its course. It recently has accelerated "phase 3" of its plan to obtain exclusive use of a major portion of the 902 - 928 MHz spectrum and oust other spectrum users.[6] This "phase 3" consists of a campaign of filings to delay license applications by persons that are seeking licenses for Amtech type technology and attempts to intimidate others into not making filings. PacTel has filed

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[3] As noted at text accompanying note 2, Pactel simultaneously asked the FCC to make provisions for its narrowband "forward links."

[4] PacTel Petition for Rulemaking, RM - 8013, at n. 29.

[5] "Moreover, narrowband licenses licensed in the 904 - 912 MHz or 918 - 926 MHz bands on the day of this petition should be allowed to renew their licenses in their current band." Id. at 35 - 36.

[6] As discussed at text accompanying note 18 PacTel has had an aggressive program of moving users out of the spectrum.

comments opposing applications filed by the Port of Oakland[7] and applications of the Missouri Pacific Railroad, which had been prepared by the Association of American Railroads.[8] Moreover, PacTel employees and representatives have also attempted to intimidate prospective licensees to not file license applications.[9]

In short, the October 20 letter carries with it a lot of baggage and is but one aspect of PacTel's concerted efforts to obtain more spectrum nationwide than that allotted for a television channel. While Amtech is very willing to live up to its obligation of mutual cooperation with PacTel, the resolution of the Dallas interference allegations should be viewed in context and considered against this much larger and complex backdrop.

II. Amtech has not ignored PacTel but has worked to meet the obligations of a licensee in a shared band.

Even though Amtech is not the licensee of the systems in California or the Dallas area as to which PacTel complains except for the Dallas North Tollway, it has a history of cooperation with

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[7] Comments of North American Teletrac and Location Technologies, Inc., in support of Petition to Deny of Mobilevision, dated October 20, 1992, file no. 342754.

[8] Comments of North American Teletrac and Location Technologies, Inc. in support of Petition to Deny of Mobilevision, dated October 15, 1992, file nos. 295053 and 295060. The Missouri Pacific and virtually all other North American railroads are in the midst of implementing a program to place two tags on each rail car and locomotive. By January 1, 1995, some 1.4 million rail vehicles will be tagged. Approximately 200,000 - 250,000 rail vehicles are anticipated to be tagged by year end.

[9] For example, on October 9, 1992, PacTel telephoned the Port of Oakland and threatened to oppose license applications filed by the Port unless it withdrew its application for frequencies in the 904 - 912 MHz band and agreed never to seek such spectrum nor to apply for frequencies in the 925 MHz band. Subsequently, PacTel filed comments supporting Ameritech's opposition to the Port's application. Also, representatives of PacTel met with representatives of the American Association of Railroads ("AAR") on October 7, 1992, and with representatives of the American Trucking Associations ("ATA") on October 8, 1992, both of whom represent

PacTel extending back over two years. This spirit of cooperation between Amtech and PacTel appeared to Amtech to be mutual.[10] A review of the correspondence between personnel of both companies will reveal that there was none of the acrimony demonstrated in the October 20 letter to you or the October 13 demand letter to the DFW Airport included at Tab 3 of the October 20 letter.[11] However, PacTel's attitude has recently changed, apparently because of Amtech's continued opposition to PacTel's petition for rulemaking.

PacTel alleges that Amtech has ignored PacTel's long-standing complaints of interference in the Dallas/Fort Worth area. Its allegations begin with a reference to a November 1991 communication to Amtech. The letter in question mentions the "potential" for interference in the Dallas/Fort Worth area. At such time, the electronic toll collection system at the Dallas North Tollway had been operating for nearly 2-1/2 years and the system at the Dallas/Fort Worth Airport had been operating for nearly one year. In point of fact, to Amtech's knowledge, PacTel had no operational system in the Dallas/Fort Worth area in November 1991. As stated in the October 20 interference complaint, the PacTel system did not

Moreover, as discussed below, resolving any interference to the PacTel system that might arise requires more than minor changes.[14] Accordingly, given the "problem" was potential, the limited information shared with Amtech about the PacTel system, and the major changes that might be required to remedy any interference, there was no action to be taken by Amtech at that time.

In early July 1992, Mr. Marvin Fath (whose affidavit is attached at Tab 4 to the interference complaint) of PacTel contacted Amtech by telephone. He raised the issue of certain interference problems that the Teletrac system was allegedly suffering in the Dallas/Fort Worth area in the 908 - 912 MHz frequencies. Then on July 9, 1992, Mr. Fath wrote to Amtech and advised that the problem involved frequencies in the 904 - 912 MHz band, a problem much broader than he had earlier indicated to Amtech and one that would prove much more difficult to solve. Mr. Fath states in his July 9 letter that he realized that "a task of this magnitude will take some time to plan and execute." Note, however, that his October 13 letter to the DFW Airport had a different characterization wherein he asserts that it would be "simple and inexpensive" for Amtech to resolve the interference issue. Mr. Fath was correct in July and wrong in October.

Again, the July 9, 1992, letter provided no information as to the sensitivity of the receivers, etc. Moreover, we at Amtech did not understand how there could be an interference problem of the apparent scope claimed by PacTel in light of PacTel's assurance in the recently filed petition that Amtech type users of the band would be grandfathered.

Amtech responded to Mr. Fath by letter of July 20 and stated that it was Amtech's policy "to cooperate to attempt to avoid interference." Amtech also asked Mr. Fath to clarify whether PacTel could tolerate any emissions in the 904 - 912 MHz band from Amtech equipment. PacTel did not respond to the July 20 letter, but on July 28 two representatives of the Teletrac Dallas office visited Amtech to discuss the problem. At this meeting, Amtech was informed that PacTel had done a frequency analysis in July 1991 and did not locate any evidence of RF emissions by Amtech tag readers in the PacTel frequencies. We were also informed that a subsequent analysis in June 1992 showed evidence of RF emissions by Amtech tag readers. This information was, and is, particularly puzzling since, as noted above, the systems at the DFW Airport and the Dallas North Tollway had been operational for some time by July

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[14] We would not recommend such changes lightly since over 50,000 customers rely upon the Amtech technology at the Dallas North Tollway and approximately 1,200 users rely upon the Amtech technology at the DFW Airport.